

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554**

In the Matter of	)	
	)	
8YY Access Charge Reform	)	WC Docket No. 18-156

**REPLY COMMENTS OF CENTURYLINK**

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8YY Access Charge Reform ) WC Docket No. 18-156

CenturyLink, Inc.<sup>1</sup> submits these reply comments in response to the Commission's *Notice of Proposed Rulemaking* in the above-referenced matter regarding 8YY access charge reform (8YY Access Reform NPRM or NPRM).<sup>2</sup>

The initial comments demonstrate that there is broad concurrence with the *NPRM's* conclusions regarding the incentives for arbitrage, fraud, and inefficiencies in the intercarrier compensation (ICC) regime currently applicable to toll-free (8YY) originating traffic.

The Commission should reject both of these extreme positions and should, instead, adopt a balanced reform approach that more cleanly addresses the problems discussed in the *NPRM*.

<sup>1</sup> This submission is made by and on behalf of CenturyLink, Inc. and its wholly owned subsidiaries.

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- Mandate bill-and-keep for interstate and intrastate end office access charges for 8YY traffic;
- Impose reasonable rate caps for tandem access charges;
- Impose a reasonable rate cap for database query charges and a prohibition on multiple query rate charges on a single call; and
- Establish a reasonable transition for each component of reform.

CenturyLink's approach largely tracks the *NPRM*'s proposals. The key difference is with respect to tandem services. Because of the concerns discussed below and in CenturyLink's initial comments and other comments, with respect to the potential harmful impacts of bill-and-keep or zero-rating for tandem services, it makes greater policy and legal sense to retain an IXC payment obligation for tandem functionality utilized for originating 8YY traffic. Relatedly, even assuming the Commission were to make this fundamental change, the *NPRM* doesn't really address the new relationships and new funding obligations that would have to be created to provide compensation to tandem service providers in the absence of an IXC payment obligation – creating significant risk of unintended consequences.

In these reply comments, CenturyLink refines its proposal in one way. The Commission should adopt a single, nationwide per-minute rate cap for tandem services rather than a framework with both a mileage cap for mileage-based tandem rates and a separate overall rate cap. As discussed below, a single rate would be simpler to implement, reduce the likelihood of disputes, and support incentives for efficiency.

Finally, it is also noteworthy that there was no opposition in the initial comments to CenturyLink's proposed approach to revenue recovery. The Commission should adopt that approach and modify its rules to permit ILECs flexibility when it comes to interstate end user charges, and should explore further steps that would eliminate any continuing state law restrictions on local service charges. Alternatively, but second-best, if the Commission is

unwilling to take this step, it should make the several modifications to the access recovery charge (ARC) necessary to permit full recovery.

## **II. DISCUSSION.**

### **A. The Commission Should Reject Comments Calling for Reform Approaches at the Two Extremes of “Do Nothing” and Overkill.**

Virtually every party filing initial comments concurred with the finding in the *NPRM* that there are serious problems in the ICC regime currently applicable to toll-free (8YY) originating traffic.<sup>3</sup> Despite this near universal agreement about the problems to be solved, there is a broad diversity of views about how to address these problems. Many of the comments either effectively support no ICC reform (or overly simplistic steps to address these problems) or support broad, over-kill ICC reforms that will only spawn new problems. The Commission should reject both of these extreme approaches to reform.

At one end of the spectrum, Teliix and Peerless, for example, oppose the *NPRM*'s across-the-board bill-and-keep proposal by which rates for all 8YY originating switched access services would be reduced to zero.<sup>4</sup> But, they also oppose the *NPRM*'s alternative by which at least some tandem services would remain compensable but would be subject to a benchmark/cap and mileage limitations.<sup>5</sup> And, they flatly oppose the *NPRM* proposals to reduce excessively

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<sup>3</sup> See, e.g., Comments of Teliix and Peerless Network (Teliix/Peerless), filed herein (Sep. 4, 2018), at 16, 21-22; Comments of West Telecom Services (West or West Telecom), filed herein (Sep. 4, 2018), at 2-3, 9-10; Comments of the Nebraska Rural Independent Companies (NRIC), filed herein (Sep. 4, 2018), at 2; Comments of Comcast, filed herein (Sep. 4, 2018), at 3-4; Comments of Charter Communications (Charter), filed herein (Sep. 4, 2018), at 9; Comments of AT&T, filed herein (Sep. 4, 2018), at 2, 8-9; Comments of Verizon, filed herein (Sep. 4, 2018), at 1; Comments of Ad Hoc Telecommunications Users Committee (Ad Hoc), filed herein (Sep. 4, 2018), at 3; Comments of ITTA, filed herein (Sep. 4, 2018), at 4; and Comments of Somos, filed herein (Sep. 4, 2018), at 1.

<sup>4</sup> Teliix/Peerless at 4-6, 10-18.

<sup>5</sup> *Id.* at 10-15, 19-20.

high database query rates.<sup>6</sup> Similarly, West Telecom and NRIC oppose bill-and-keep for any portion of switched access functionality for 8YY originating traffic.<sup>7</sup> They suggest that the Commission can adequately address the problems at issue by issuing declarations that various practices underlying problems with 8YY traffic are unlawful<sup>8</sup> or that these problems can be adequately addressed by complaints to the Commission or court actions.<sup>9</sup> Windstream, et al. oppose across-the-board bill-and-keep and attack the legal grounds for database query reform, but offer no reform alternatives.<sup>10</sup>

This first group effectively advocates that the Commission should do little or nothing to address the problems at issue, or propose overly simplistic solutions. Complaint processes already exist, and significant problems still flourish. Similarly, declaring the activity of some of the ultimate bad actors unlawful sounds good in theory, but is overly simplistic in application. Robo-calling and mileage pumping are already universally accepted as unlawful, and the Commission can and should take specific steps to address bad actors involved in such practices. But, that doesn't mean that some level of reform of the ICC regime for 8YY traffic wouldn't help further mitigate against the negative impacts of these practices and bring about greater efficiencies overall. Moreover, still other practices underlying the *NPRM*'s proposed reforms, like 8YY aggregation, are not always harmful and are, in fact, a positive development in the right

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<sup>6</sup> *Id.* at 17-18.

<sup>7</sup> See West at 3-4, 7-8, 13-16 (also proposing a non-binding "good faith" direct interconnection obligation); NRIC at 11-13. See also West at 22-24.

<sup>8</sup> See West at 4-5; NRIC at 12-13.

<sup>9</sup> NRIC at 7; see also West at 3-4.

<sup>10</sup> Comments of Windstream Services, Frontier Communications and NTCA (Windstream, et. al.), filed herein (Sep. 4, 2018), at 1, 2-3, 4, 10-11; see also Windstream, et. al. at 12-13.

circumstances.<sup>11</sup> Thus, a simple declaration of unlawfulness would not be appropriate for that particular issue. Rather, a broader reform of some level is needed to strike the right balance in that context.

At the other end of the spectrum, AT&T proposes a “kitchen-sink” of reform steps. It ultimately calls for bill-and-keep across-the-board (i.e. zero rating for all originating end office and tandem access charges for 8YY traffic).<sup>12</sup> “In the alternative,” it supports bill-and-keep for end office charges and commonly-owned end office/tandem combinations coupled with a direct connection obligation.<sup>13</sup> Regardless, it asks the Commission to extend bill-and-keep to a broader category of services than is even proposed in the *NPRM*,<sup>14</sup> proposes a faster transition timeline than is proposed in the *NPRM*,<sup>15</sup> and suggests that even query charges might be reduced to bill-and-keep as an alternative to the rate cap proposed in the *NPRM*.<sup>16</sup> Verizon also proposes bill-and-keep across-the-board and calls for a still faster, one-year transition.<sup>17</sup> Moreover, Verizon misleadingly portrays, as “typical” of the traffic at issue, purported 8YY arbitrage schemes by two LECs with whom Verizon has ongoing disputes – while wholly ignoring the large portions of access charges that would be impacted by the proposed reforms where the billing party has no

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<sup>11</sup> Comments of CenturyLink, filed herein (Sep. 4, 2018), at 4-7.

<sup>12</sup> AT&T at 2, 17-18. This, despite acknowledging elsewhere in its comments that bill-and-keep across-the-board for all originating access charges for 8YY traffic cannot be justified. *See id.* at 6, 16-17.

<sup>13</sup> AT&T at 2-3, 6-7.

<sup>14</sup> While the *NPRM* proposed excluding fixed originating access charges from any bill-and-keep framework, AT&T contends fixed charges should be eliminated as well. AT&T at 13.

<sup>15</sup> *Id.* at 4, 12 (proposing a two-step, two-year transition instead of the 3-step, three-year transition proposed in the *NPRM*).

<sup>16</sup> *See id.* at 15.

<sup>17</sup> Verizon at 1-4.

relationship to any arbitrage that may be occurring with 8YY traffic.<sup>18</sup> Various comments filed by cable stakeholders call for bill-and-keep across-the-board not only for 8YY originating access, but also for non-8YY originating access – something not even within the scope of the current *NPRM*.<sup>19</sup>

This second group calls for overly-aggressive approaches that would only create a new array of problems. As CenturyLink discussed in great detail in its initial comments, while it makes sense to accomplish some reform of originating 8YY access charges, a bill-and-keep across-the-board framework that fails to account in *any* way for the differences between 8YY originating access functionality and terminating access functionality is flawed.<sup>20</sup> A fundamental assumption that led to the bill-and-keep framework for terminating traffic established in the *Transformation Order* was that both the calling and called parties are equal cost causers for the traffic.<sup>21</sup> But, a fundamental purpose of 8YY service is to *relieve* calling parties of the cost of the call. These differences need not stand in the way of some level of ICC reform for 8YY traffic. But, they cannot be ignored entirely. Here it's also noteworthy that there are specific functions

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<sup>18</sup> *Id.* at 2-4.

<sup>19</sup> Comcast at 2-4, 5-6; *see generally* Comments of NCTA, filed herein (Sep. 4, 2018).

<sup>20</sup> CenturyLink at 2, 9-10.

<sup>21</sup> *See Connect America Fund; A National Broadband Plan for Our Future; Establishing Just and Reasonable Rates for Local Exchange Carriers; High-Cost Universal Service Support; Developing an Unified Intercarrier Compensation Regime; Federal-State Joint Board on Universal Service; Lifeline and Link-Up; Universal Service Reform - Mobility Fund*, WC Docket Nos. 10-90, 07-135, 05-337, 03-109, CC Docket Nos. 01-92, 96-45, GN Docket No. 09-51, WT Docket No. 10-208, Report and Order and Further Notice of Proposed Rulemaking, FCC 11-161, 26 FCC Rcd 17663, 17907 ¶ 744 (2011) (*USF/ICC Transformation Order*), *aff'd sub nom.*, *Direct Communs. Cedar Valley, LLC v. FCC and In re: FCC 11-161*, Nos. 11-9900, *et al.*, 753 F.3d 1015 (10th Cir. 2014), *petitions for rehearing en banc denied*, Orders, Aug. 27, 2014, *cert. denied*, 135 S. Ct. 2072, May 4, 2015 (Nos. 14-610, *et al.*).



required for 8YY calling, such as database queries, that not all parties originating 8YY calls provide and that entail some level of real cost.

Additionally, when it comes to potential reform of rates for tandem services, a bill-and-keep approach would not adequately assure that LECs providing such services have the ability to recover their costs – and would disincentivize investment in tandem facilities.<sup>22</sup> The *NPRM* doesn't really address the new relationships and new funding obligations that would have to be created to provide compensation to tandem service providers in the absence of an IXC payment obligation. These are fundamental changes and there is no record about how this would actually work. In contrast, CenturyLink's more balanced approach would avoid these problems.

**B. The Commission Should Instead Adopt the Targeted Approach Proposed by CenturyLink.**

Instead of adopting the more extreme approaches discussed above, the Commission should adopt a balanced reform approach that more cleanly targets the problems discussed in the *NPRM*.

CenturyLink has proposed just such a framework, consisting of four core principles:

- Mandate bill-and-keep for interstate and intrastate end office access charges for 8YY traffic.<sup>23</sup>
- Impose reasonable rate caps for tandem access charges.<sup>24</sup>
- Impose a reasonable rate cap for database query charges and a prohibition on multiple query rate charges on a single call.<sup>25</sup>

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<sup>22</sup> See Comments of CenturyLink, WC Docket No. 10-90, CC Docket No. 01-92 (Oct. 26, 2017) (Commission must ensure carriers have right to be compensated equally within context of bill-and-keep framework as, otherwise, it would penalize those carriers and disincentivize them to make requisite facilities investments).

<sup>23</sup> CenturyLink at 8.

<sup>24</sup> *Id.* at 8-9.

<sup>25</sup> *Id.* at 12-13.

- Establish a reasonable transition for each of these reform components.<sup>26</sup>

The key departure in this framework from the two central alternative reform frameworks proposed in the *NPRM* is with respect to tandem services. The concerns discussed above and in CenturyLink's initial comments and other comments, with respect to an across-the-board bill-and-keep framework suggest it makes sense to retain an IXC payment obligation for tandem functionality. CenturyLink's proposed framework does that.<sup>27</sup> CenturyLink encourages the Commission to take the opportunity, in this proceeding, to also fix the problems created by the Year 6/2017 *Transformation Order* transition whereby only a limited subset of common ownership ILEC terminating tandem services were subjected to bill-and-keep.<sup>28</sup> But, alternatively, if, despite these concerns, the Commission does adopt a bill-and-keep rule for tandem services only where the originating carrier owns the tandem, common ownership of the end office and tandem should be determined at the holding company level, and it should also extend that definition to the terminating context. This is another way the Commission can avoid the asymmetrical result created in the Year 6/2017 stage of the *Transformation Order* transition.<sup>29</sup> Notably, NCTA agrees with this position, but suggests that the Commission go further and extend a bill-and-keep mandate as well whenever a revenue sharing agreement exists between an end office and tandem owner.<sup>30</sup> But, this proposal also goes too far. Revenue

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<sup>26</sup> *Id.* at 14-16 (largely supporting the transition concepts teed-up in the *NPRM*).

<sup>27</sup> *Id.* at 9-10.

<sup>28</sup> *Id.* at 10 & n. 16 (explaining why the better approach is an ICC framework for originating 8YY tandem services (and for all tandem services) whereby equivalent tandem services remain equally compensable for all types of carriers).

<sup>29</sup> *Id.* at 9-10.

<sup>30</sup> NCTA at 4-5.

sharing in and of itself is not harmful. To be sure, revenue sharing can be a *part* of a harmful scheme, such as in traffic pumping schemes. But, in some circumstances, revenue sharing can help permit a competitive market to work and encourage efficiency.

Beyond this variation for tandem services, CenturyLink's approach would largely adopt the *NPRM*'s proposals – bill-and-keep for end office services with a three-year transition, a rate cap for database query charges although CenturyLink suggests a proper transition, and a prohibition on multiple query rate charges on a single call.

**C. One Refinement Is in Order to CenturyLink's Proposal for a Tandem Rate Cap.**

As noted, CenturyLink believes one refinement is in order to its reform proposal as described in its initial comments. CenturyLink suggested that the Commission address any potential arbitrage problems associated with tandem charges for originating 8YY access traffic by both: (1) assuring that all tandem services are equally compensable; and (2) subjecting those charges, for tandem owners, to both a distance cap for mileage charges and an overall rate cap.<sup>31</sup> However, an overall single composite rate cap for tandem services (usage-based and mileage-based) would likely be preferable to a combined mileage cap/rate cap framework – since the latter would impose undue complexity. Accordingly, the Commission should adopt a single, nationwide per-minute rate cap for tandem services rather than a framework with both a mileage cap for mileage-based tandem rates and a separate overall rate cap.<sup>32</sup> A single rate would be

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<sup>31</sup> CenturyLink at 8-9.

<sup>32</sup> Under the *USF/ICC Transformation Order*, the owner of an end office that subtends an unaffiliated tandem is permitted in certain cases to assess charges for common transport for terminating traffic when the carrier actually provides that transport function. 26 FCC Rcd 17663 at ¶ 970 & n. 2020. To the extent the Commission follows a similar approach as it relates to originating usage-based transport, CenturyLink proposes that such charges should also be subject to reasonable caps to eliminate incentives for mileage pumping and other forms of arbitrage.

simpler for carriers to implement; would reduce the possibility of disputes about whether mileage for any call was being properly charged by the tandem owner; and would avoid distorting carriers' incentives by encouraging them to maximize mileage rather than network efficiency. At the same time, if the Commission sets the single rate cap properly, it would still permit carriers to recover adequate revenues to support tandem services.

**D. The Commission Should Adopt CenturyLink's Proposed Approach to Revenue Recovery.**

Finally, as noted above, there was no opposition to CenturyLink's proposed approach to revenue recovery in the initial comments. The Commission should adopt that approach. As discussed in CenturyLink's initial comments, to do so, it must modify its rules to permit ILECs flexibility when it comes to interstate end user charges.<sup>33</sup> And, in doing so, it should also now explore further steps that would eliminate any continuing state law restrictions on local service charges.<sup>34</sup> Alternatively, but second-best, if the Commission is unwilling to take this step, it should make the several modifications to the ARC necessary to permit full recovery.<sup>35</sup>

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<sup>33</sup> CenturyLink at 16-19.

<sup>34</sup> *Id.* at 3.

<sup>35</sup> *Id.* at 20.

### III. CONCLUSION.

For the reasons stated above, the Commission should take the action described herein.

Respectfully submitted,

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